



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

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STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO

HAMPTON UNIVERSITY

Registration No. 60106

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the State Air Pollution Control Board and Hampton University for the purpose of resolving certain violations of the Virginia Air Pollution Control Law, the Title V and State Operating Permits and the Regulations for the Control and Abatement of Air Pollution.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and -1301.
2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
4. "Hampton University", a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Hampton University is a "person" within the meaning of Va. Code § 10.1-1300.

5. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
6. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law..
7. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" means 9 VAC 5 Chapters 10 through 80.
8. "SOP" means the State Operating Permit to operate a co-educational institution of higher education, which was issued under the Virginia Air Pollution Control Law and Regulations to Hampton University on August 21, 2007.
9. "Title V Permit" means the Title V Federal Operating Permit to operate a Stationary Source of Air Pollution, which was issued under the Virginia Air Pollution Control Law and Regulations to Hampton University on June 21, 2004 and modified on August 16, 2006.
10. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
11. "Va. Code" means the Code of Virginia (1950), as amended.
12. "VAC" means the Virginia Administrative Code.
13. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*), of Title 10.1 of the Va. Code.
14. "VEE" means a Visible Emissions Evaluation, as determined by EPA Method 9 (*see* 40 CFR 60, Appendix A).

SECTION C: Findings of Fact and Conclusions of Law

1. Hampton University owns and operates a co-educational institution of higher learning located at E. Queen Street in Hampton Virginia.
2. Hampton University is subject to the Title V Permit and SOP for the operation of two coal fired boilers (Unit Nos. 1 and 2) and other boilers that supply heat to Hampton University's academic buildings, dormitories and other campus buildings.
3. On November 2, 2007 and December 6, 2007, following citizen complaints of black smoke from the Hampton University stack (STK-1), DEQ staff conducted a VEE at the Facility for compliance with Visible Emission requirements of the Title V Permit, the SOP, and the Regulations. DEQ staff made the following observations:

Date	VEE 1 Percent Opacity	VEE 2 Percent Opacity	VEE 3 Percent Opacity
November 2, 2007	35.63	33.54	---
December 6, 2007	63.75	37.71	52.46

4. Condition III.A.7 of the Title V Permit states that "Visible emissions from each of the boiler stacks (STK-1, STK-2, STK-3 and STK-4) shall not exceed twenty (20) percent opacity except during one six-minute period in any one hour in which visible emissions shall not exceed (60) percent opacity (9 VAC 5-40-80 and 9 VAC 5-80-110)".
5. On January 28, 2008, based on the November 2, 2007 and December 6, 2007 inspections and follow-up information, the DEQ issued a NOV to Hampton University for the violations described in paragraphs C.3 and C.4 above.
6. On November 19, 2008, DEQ staff conducted a Partial Compliance Evaluation of the Facility for compliance with the requirements of the Virginia air Pollution Control Law, the Title V Permit, the SOP, and the Regulations. Based on the inspection DEQ staff made the following observation:

Hampton University submitted a stack test protocol on November 13, 2008. After reviewing the protocol and files, DEQ staff discovered that the most recent stack test for Hampton University coal-fired boiler Unit No. 1 was conducted on March 15, 2002.

7. Condition III.D.2 of the Title V Permit requires Hampton University to perform a stack test once every five (5) calendar years for the two coal-fired boilers (Unit Nos. 1 and 2) to demonstrate compliance with the PM and SO₂ emission limitations as specified in Permit Conditions III.A.5. and 6.
8. On January 5, 2009, based on the November 19, 2008 inspection and follow-up information, the DEQ issued a NOV to Hampton University for the violations described in paragraphs C.6 and C.7 above.
9. Hampton University coal-fired boiler Unit No. 1 was stack tested on March 9-12, 2009. Results of the stack test indicate coal-fired boiler Unit No. 1 was in compliance with Title V Permit and SOP emission limits.
10. On January 15, 2009 DEQ staff conducted a Partial Compliance Evaluation of the Facility for compliance with the requirements of the Virginia air Pollution Control Law, the Title V Permit, the SOP, and the Regulations. Based on the inspection DEQ staff made the following observation:

During the inspection records reviewed indicated that Hampton University had not conducted the annual fuel analysis for chlorine concentration for calendar years 2007 and 2008.

11. Condition 9 of the SOP requires Hampton University to sample and analyze fuel from at least one shipment of coal annually to determine chlorine concentration in the coal sample.
12. On March 2, 2009, based on the January 15, 2009 inspection and follow-up information, the DEQ issued a NOV to Hampton University for the violations described in paragraphs C.10 and C.11 above.
13. On January 24, 2009, Hampton University conducted an annual chlorine concentration analysis for one shipment of coal. Conducting the annual chlorine on January 24, 2009 satisfied Condition 9 of the SOP for an annual chlorine concentration analysis.
14. Based on the results of the November 2, 2007 and December 6, 2007 VEEs, the November 19, 2008 Protocol Review, and the January 15, 2009 inspection and record review, the Board concludes that Hampton University has violated Title V Permit Condition III.A.7, Condition III.D.2 and SOP Condition 9 as described in paragraphs C.3, C.4, C.6, C.7, C.10 and C.11 above.
15. Hampton University has submitted documentation that verifies that the violations described in paragraphs C.6, C.7, C.10 and C.11 above, have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it pursuant to Va. Code §§ 10.1-1309 and 1316, the Board orders Hampton University and Hampton University agrees to pay a civil charge of \$39,889.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Hampton University shall include its Federal Employer Identification Number (FEIN) [] with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Hampton University good cause shown by Hampton University, or on its own motion pursuant

to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.

2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For the purposes of this Order and subsequent actions with respect to this Order, Hampton University admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Hampton University consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Hampton University declares it has received fair and due process under the Administrative Process Act and the Virginia Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Hampton University to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Hampton University shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Hampton University shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Hampton University shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;

- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours and in writing within three business days, of learning of any condition above, which Hampton University intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

- 9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
- 10. This Order shall become effective upon execution by both the Director or his designee and Hampton University. Nevertheless, Hampton University agrees to be bound by any compliance date which precedes the effective date of this Order.
- 11. This Order shall continue in effect until:
 - (a) Hampton University petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - (b) the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Hampton University.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Hampton University from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

- 12. Any plans, reports, schedules or specifications attached hereto or submitted by Hampton University and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
- 13. The undersigned representative of Hampton University certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Hampton University to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Hampton University.
- 14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and

there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, Hampton University voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 26th day of August, 2009.

Francis L. Daniel

Francis L. Daniel

Hampton University voluntarily agrees to the issuance of this Order.

Date: August 20, 2009 By: Nellie H. Crawford Asst. VP for Business Aff. & Comptroller
(Title)

of Hampton University.

Commonwealth of Virginia

City/County of Hampton

The foregoing document was signed and acknowledged before me this 20 day of
August, 2009, by Nellie H. Crawford, who is

Assistant Vice President for Business Affairs and Comptroller of Hampton University on behalf
of Hampton University.

Cayn J. J. A.

Notary Public

7007461

Registration No.

My commission expires: March 31, 2010

